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BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE)
SUBSTANTIAL DEVELOPMENT PERMIT)
DENIED BY THE TOWN OF HUNTS)
POINT TO DAVID L. ASHBAUGH,)
DAVID L. ASHBAUGH,)
Appellant,)
v.)
TOWN OF HUNTS POINT,)
Respondent.)

SHB NO. 82-54

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the request for review of the denial of a shoreline substantial development permit by the Town of Hunts Point to David L. Ashbaugh came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana, Larry Faulk, Richard A. O'Neal, Rodney Kerslake, and Nancy Burnett, Members, convened at Lacey, Washington, on April 11, 1983. William A. Harrison, Administrative Law Judge, presided.

Appellant David L. Ashbaugh appeared and represented himself.

Respondent Town of Hunts Point appeared by its attorney, John A. Roberts. Reporter Nancy A. Miller recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

This matter arises in Hunts Point on Fairweather Bay of Lake Washington. In 1979 appellant David L. Ashbaugh engaged Seaborn Pile Driving Company to construct a 59-foot dock, timber bulkhead, and 115 cubic yards of fill at the waterfront of his residence. The Ashbaugh family and Seaborn agreed that Seaborn would obtain the necessary permits for the project.

II

Seaborn proceeded to construct the development without first obtaining necessary permits. After the development was in place for about one year, respondent, Town of Hunts Point, inquired about the project which led to an investigation by the U. S. Army Corps of Engineers. This culminated in legal action by the U. S. Attorney to the end that Seaborn was fined \$1,000 for its activities. The Ashbaughs were not fined but were requested by the Corps to apply for a permit for the development. The Ashbaughs did so and applied to the Town of Hunts Point for a shoreline substantial development permit, as well.

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III

The State Departments of Fisheries, Game, Ecology, Transportation, Health, Parks and the Office of Archeology have no environmental concerns with the development. Following a public meeting, the Town sent a letter to thirteen neighbors of the Ashbaughs soliciting comments or objections. Apparently, two persons objected but neither their identity nor basis for objection appears in this record. On November 23, 1982, the Town denied the Ashbaughs' application for a shoreline substantial development permit.

IV

To determine the basis for the application's denial, the Board takes official notice of the application denied on November 23, 1982, and a letter of the same date from the Mayor to appellant. These were attached to the request for review in this matter. The letter cites as a basis for the denial:

1. Hunt's Point Zoning Ordinance (No. 111) Section 8, 1(c) and (d).
2. Hunt's Point Shoreline Master Program (Ordinance No. 122) regarding change of shoreline and fill.

Although no citation is made to the Master Program in the letter, the application in question refers to page 8-VI, Shoreline Uses and Regulations-Piers and Page 9-E. Dredging and Landfill. These ordinances are on file with the Code Reviser and the State Department of Ecology and the Board takes official notice of them. A third local ordinance, No. 120, was cited in the letter but not identified on this record nor is it filed with the Code Reviser and Department of Ecology.

V

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

The Board reviews the development for consistency with the applicable shoreline master program and the provisions of the Shoreline Management Act. RCW 90.58.140.

II

The Hunts Point Shoreline Master Program (HPSMP) permits moorage, such as the dock in question, if it is in accordance with the zoning ordinance. HPSMP, page 8-VI. The zoning ordinance provisions cited by the Town, section 8, 1(c) and (d) state that moorage facilities are subject to:

(c) Approval of the Town Council and state authorities, when required, as to compliance with the requirements of the State Shoreline Management Control (sic) Act.

(d) Approval by the Town Council to assure that the intent of this section of the Ordinance has been met by giving proper consideration to the rights of adjoining property owners. This applies in particular to moorage facilities in the waters of Hunts Point lying south of the line parallel to the centerline of N.E. 32nd Street and 550 feet northerly of said centerline wherein such facilities may be restricted in length to less than 100 feet, as deemed necessary to avoid impediment to the right of other property owners in the area.

On the record made before us, appellant has proven that the project is

1 consistent with these provisions.

2 III

3 The HPSMP prohibits landfill in the "Residential-Natural A" area.
4 HPSMP, page 9-E. The site in question is not within the
5 "Residential-Natural A" area. HPSMP map (final page of the master
6 program). Appellant has proven that the project is consistent with
7 this provision.

8 IV

9 On the record made before us, the project is consistent with the
10 applicable shoreline master program and the Shoreline Management Act.
11 A shoreline substantial development permit should be issued for the
12 proposal as set out in the application. We do not condone
13 construction before proper permits are obtained nor was such action
14 condoned here. The after-the-fact nature of this application,
15 however, is not a proper basis to bar its issuance.

16 V

17 Any Finding of Fact which should be deemed a Conclusion of Law is
18 hereby adopted as such.

19 From these Conclusions the Board enters this
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ORDER

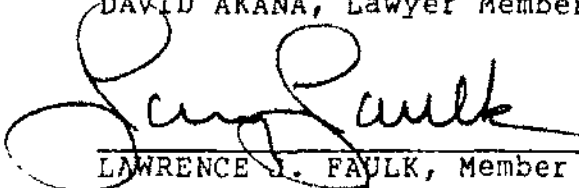
The denial of a shoreline substantial development permit by the Town of Hunts Point to David L. Ashbaugh is reversed and the matter remanded for issuance of such a permit in accordance with the application.

DONE at Lacey, Washington, this 19 day of MAY, 1983.

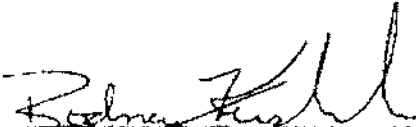
SHORELINES HEARINGS BOARD


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RICHARD A. O'NEAL, Member


RODNEY KERSLAKE, Member


NANCY BURNETT, Member


WILLIAM A. HARRISON
Administrative Law Judge

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